v. *Murray*,[3] and *Walsh* v. *Alexander*.[4] But, as the learned Judge said in concluding his judgment that:—

"It has been held that the granting of an injunction is a discretion of the court. It is essential that the party seeking such a relief makes available to the court all facts material to the court before exercising its discretion. In my view, the plaintiff in suppressing facts at 1, 2 and 3 above had not come to court with clean hands. In principle, an injunction being an equitable remedy may not be extended to the plaintiff under those circumstances."

Even if the learned Judge was wrong in (2) the appellant has failed to convince us that the learned Judge was wrong in respect of either (1) or (3).

Accordingly, we would dismiss the appeal with costs. Deposit to the respondents on account of taxed costs.

Appeal dismissed.

Solicitors: *Sault & Co.; Patmanathan & Co.*

TAN SRI HAJI OTHMAN SAAT v. MOHAMED BIN ISMAIL

[F.C. (Raja Azlan Shah C.J., Wan Suleiman F.J. and Abdoolcader J.) May 20 & 25, 1982]
[Kuala Lumpur – Federal Court Civil Appeal No. 187 of 1981]

Administrative Law – Declaration – Validity of alienation of State land – Locus standi of plaintiff – Whether plaintiff has real interest in suit – Specific Relief Act (Act 137) s. 41 – R.H.C. 1980, 0.15 r. 16.

Practice and Procedure – Action for declaration – R.H.C. 1980, 0.15 r. 16.

The respondent and 183 other persons had applied for land in Mersing, Johore but with no response for some eight years. The respondent learnt that land in the area had been alienated to a number of people, including the appellant, who was at all material times the Menteri Besar of the State of Johore and other personages in the upper echelon of the administrative service. The respondent applied for declarations basically impugning the validity of the alienation of the land and named as respondents thereto the State Director of Lands and Mines and the Government of the State of Johore in addition to the appellant. The appellant applied to have the proceedings struck out primarily on a challenge to the respondent's standing to sue and also on certain procedural objections. The appellant's application was dismissed in the High Court, see [1982] 2 M.L.J. 133, and he appealed to the Federal Court on the issue of the respondent's *locus standi*.

Held: (1) although counsel for the respondent indicated in the court below that he was proceeding under section 41 of the Specific Relief Act, the statutory provision could not apply as no entitlement of the respondent to any legal character or status or right to property or the denial thereof was in issue. The declarations could be sought under Order 15 rule 16 of the Rules of the High Court, 1980;

(2) although it is not necessary for a plaintiff who seeks relief by way of declaratory judgment to show that he has a present cause of action, he must be somebody with such an interest in the subject-matter of the action as to justify his seeking relief;

(3) the respondent in this case was alleging an abuse of power and he sought to impugn the validity of the alienation of the land in question to the appellant. This was a clear case of a person having a special or substantial interest in the subject-matter of the proceedings he had instituted and whose legal interests were particularly affected. This clearly gave him capacity to sue and there could be no justification in debarring him from doing so.

Cases referred to:

(1) *Supreme-General Films Exchange Ltd.* v. *His Highness Maharaja Sir Brijnath Singhji Deo of Maihar and Ors.* A.I.R. 1975 S.C. 1810.

(2) *Vemareddi Ramaraghava Reddy & Ors.* v. *Konduru Seshu Reddy & Ors.* A.I.R. 1967 S.C. 436.

(3) *Fischer* v. *Secretary of State for India in Council* (1899) 26 I.A. 16.

(4) *Partab Singh* v. *Bhabuti Singh* (1913) 40 I.A. 182.

(5) *Lim Cho Hock* v. *Speaker, Perak Legislative Assembly* [1979] 2 M.L.J. 85, 87.

(6) *Wilson, Walton International (Offshore Services) Ltd.* v. *Tees & Hartlepools Port Authority* [1969] 1 Lloyds L.R. 120, 124.

(7) *Stockwell* v. *Southgate Corporation* [1936] 2 All E.R. 1343, 1351.

(8) *Boyce* v. *Paddington Borough Council* [1903] 1 Ch. 109, 114.

(9) *Gouriet & Ors.* v. *Union of Post Office Workers* [1978] A.C. 435, 513, 518.

(10) *Russian Commercial and Industrial Bank* v. *British Bank for Foreign Trade Ltd.* [1921] 2 A.C. 438, 448.

(11) *Forster* v. *Jododex Australia Proprietary Ltd.* (1972) 127 C.L.R. 421, 438.

(12) *Australian Conservation Foundation Incorporated* v. *Commonwealth of Australia & Ors.* [1980] 28 A.L.R. 257, 268, 276, 284.

(13) *Onus & Anor* v. *Alcoa of Australia Ltd.* [1981] 36 A.L.R. 425.

(14) *Mills* v. *Avon & Dorset River Board* [1955] Ch. 341.

(15) *Croudace* v. *Zobel* [1899] A.C. 258, 261.

(16) *Booth & Co. International Ltd. & Ors.* v. *National Enterprise Board & Ors.* [1978] 3 All E.R. 624.

(17) *Lim Cho Hock* v. *Government of the State of Perak & 2 Ors.* [1980] 2. M.L.J. 148, 149-151.

(18) *Johnco Nominees Proprietary Ltd.* v. *Albury-Wodonga (N.S.W.) Corporation* [1977] 1 N.S.W.L.R. 43.

(19) *Blackburn* v. *Attorney-General* [1971] 1 W.L.R. 1037.

(20) *Regina* v. *Greater London Council, Ex parte Blackburn* [1976] 1 W.L.R. 550.

(21) *Regina* v. *Metropolitan Police Commissioner, Ex parte Blackburn, The Times*, 7th March 1980.

(22) *Regina* v. *Horsham Justices, Ex parte Farquharson and Anor.* [1982] 2 W.L.R. 430, 446.

(23) *Inland Revenue Commissioners* v. *National Federation of Self-Employed and Small Businesses Ltd.* [1981] 2 W.L.R. 722, 737, 740.

FEDERAL COURT.

C.K.G. Pillay for the appellant.

G.S. Nijar (*Abdul Razak Ahmad* and *Mohideen Abdul Kader* with him) for the respondent.

Cur. Adv. Vult.

Abdoolcader J. (delivering the judgment of the Court): The short but pivotal point raised for determination in this appeal relates to the capacity of the respondent to institute and maintain the proceedings instituted by him in this matter. This involves the question of his *locus standi* or standing to sue, *scilicet*, whether the instigator of an action has the right to bring the mechanism of the court into operation.

The Basic Facts

The respondent (and the court has been constantly reminded in these proceedings of his vocation as a fisherman though what his piscatorial pursuit has got to do with his standing to sue is beyond us) and 183 other persons applied in May, 1972 for State land in Sekakap, Mersing in the State of Johore but with no response for some 8 years. It then came to his knowledge, and this is borne out by an official search, that some time in 1976 land in that area had in fact been alienated to more than 100 people, the majority of whom are not resident in Mersing, including

the appellant who was at all material times the Menteri Besar of the State of Johore and personages in the upper echelon of the administration such as members of the State Executive Council and Ministers.

The respondent on December 23, 1980 instituted these proceedings seeking declarations basically impugning the validity of the alienation of land in Mersing to the appellant and named as respondents thereto the State Director of Lands and Mines and the Government of the State of Johore in addition to the appellant. The appellant applied on March 17, 1981 to have the proceedings instituted struck out primarily on a challenge to the respondent's standing to sue and also on certain procedural objections. The appellant's application was dismissed in the High Court on September 20, 1981 and the appeal *a quo* has been presented before us only on the issue of the respondent's *locus standi*.

The Question of The Respondent's Standing

It will be necessary at the outset to consider the scope of the power to grant declaratory orders and judgments. Chapter VI of the Specific Relief Act, 1950 deals with declaratory decrees and section 41 thereof provides for the discretion of the court as to declarations of status or right. Section 41 of the Specific Relief Act was textually adopted *totidem verbis* from section 42 of the Indian Specific Relief Act, 1877 (now section 34 of the Indian Specific Relief Act, 1963), and on an application of the law enunciated by the Privy Council and the Supreme Court of India in relation to the equivalent provisions in the Indian Specific Relief Act and Civil Procedure Code, section 41 of the Specific Relief Act gives statutory recognition to a well-recognised type of declaratory relief and subjects it to a limitation but it cannot be deemed to exhaust every kind of declaratory relief or to circumscribe the jurisdiction of the courts to give declarations of right in appropriate cases falling outside it. The court has power to grant such a decree independently of the requirements of the section, and such a declaration outside the purview of this statutory enactment will be governed by the general provisions of Order 15 rule 16 of the Rules of the High Court, 1980 which will then apply [*Supreme General Films Exchange Ltd.* v. *His Highness Maharaja Sir Brijnath Singhji Deo of Maihar & Ors.*,[1] following *Vemareddi Ramaraghava Reddy & Ors.* v. *Konduru Seshu Reddy & Ors.*[2] relying on the decisions of the Privy Council in *Fischer* v. *Secretary of State for India in Council*[3] and *Partab Singh* v. *Bhabuti Singh*[4]].

Although counsel for the respondent indicated in the court below that he is proceeding under section 41 of the Specific Relief Act, this statutory provision cannot apply as no entitlement of the respondent to any legal character or status or right to property or denial thereof is in issue, and he now accepts in answer to us that the declarations are in fact sought under the provisions of Order 15 rule 16 of the Rules of the High Court, 1980 and not section 41 of the Specific Relief Act. In *Lim Cho Hock* v. *Speaker, Perak Legislative Assembly*[5] it was held (at page 87) that a plaintiff in an action under Order 25 rule 5 of the Rules of the High Court, 1957 (now Order 15 rule 16 of the Rules of the High Court, 1980) need only establish that his legal interests are peculiarly affected. Although it is not necessary for a plaintiff who seeks relief by way of declaratory judgment to show that he has a present cause of action, 'he must be somebody with such an interest in the subject-matter of the action as to justify his seeking relief [*Wilson, Walton International (Offshore Services) Ltd.* v. *Tees & Hartlepools Port Authority*[6] (at page 124)]. A private individual may sue for a declaration if he has a cause of action at common law or to protect a statutory right, or if he suffers or will suffer special damage as a result of the defendant's action. In *Stockwell* v. *Southgate Corporation*[7] Porter, J., said (at page 1351) that the test was whether the plaintiffs were 'peculiarly affected'.

The locus classicus of course on this aspect is *Boyce* v. *Paddington Borough Council*[8] where Buckley, J., laid down (at page 114) a formula which has been treated with the respect generally reserved for statutes in relation to the conditions which must be satisfied before a private person can claim an injunction to protect a public statutory right:

> "A plaintiff can sue without joining the Attorney-General in two cases: first, where the interference with the public right is such as that some private right of his is at the same time interfered with ...; and, secondly, where no private right is interfered with, but the plaintiff, in respect of his public right, suffers special damage peculiar to himself from the interference with the public right".

The first limb of the exposition in *Boyce*[8] simply means that the availability of injunctions and declarations at the instance of an individual to protect private rights is not diminished where the threat to the private right also constitutes a threat to a public right. The second limb to the extent that it is read liberally would appear to include everyone with a legitimate grievance. The principle formulated in *Boyce*[8] was applied and reaffirmed by the House of Lords in *Gouriet and Ors.* v. *Union of Post Office Workers*[9] *(passim,* and especially at page 513 per Lord Edmund-Davies and page 518 per Lord Fraser of Tulleybelton).

On a general consideration of the authorities it would seem that the plaintiff in proceedings for a declaration need do no more than establish that he has a 'real interest' in the suit. This was the test propounded by Lord Dunedin in *Russian Commercial and Industrial Bank* v. *British Bank for Foreign Trade Ltd.*[10] (at page 448) which has been quoted with approval in the High Court of Australia by Gibbs, J., (now Chief Justice) in *Forster* v. *Jododex Australia Proprietary Ltd.*[11] (at page 438) and also in other recent cases adopting a similar approach on the basis of 'substantial interest'. The High Court of Australia held in *Australian Conservation Foundation Incorporated* v. *Commonwealth of Australia & Ors.*[12] that a plaintiff has no standing to bring an action to prevent the violation of a public right unless he has, at the same time, a private right of his own interfered with or suffered special damage peculiar to himself, and Gibbs, J. said that in the rule as to *locus standi* to enforce public rights, the words 'special damage peculiar to himself' should be regarded as equivalent to 'having a special interest in the subject-matter of the action' (at pages 268, 276, 284). This *dictum* of Gibbs, J., explaining the principle stated by Buckley, J., in *Boyce*[8] was applied

by 6 of the judges in *Onus & Anor.* v. *Alcoa of Australia Ltd.*[13].

The requirement of an interest to sue does not present any problem so long as the administrative act submitted for judicial review is an individual decision *inter alia* in which he is refused something to which he considers himself to be entitled, as in *Mills* v. *Avon & Dorset River Board*[14] where a fisherman obtained a declaration confirming his right to a fishing licence which had been refused to him. In *Croudace* v. *Zobel*[15] the Privy Council upheld the grant of an injunction at the instance of a plaintiff who, said Lord Hobhouse (at page 261), 'has a definite statutory right to apply for a (mining) lease, which he has exercised, and his possibility of getting that lease gives him an interest to oppose operations which may have the effect of injuring or even of destroying the subject-matter of his application while it is yet pending'. We would also refer to *Booth & Co. International Ltd. & Ors.* v. *National Enterprise Board & Ors.*[16] where an application by the National Enterprise Board to have the action by the plaintiff for a declaration struck out was dismissed on the ground *inter alia*, that it was arguable that since the Industry Act, 1975 provided no remedy for breach of statutory duty, it was open to private persons who were aggrieved by an alleged breach by the Board of its statutory duty to sue in respect of it if they could show peculiar injury, that is to say, something over and above the injury suffered by the public at large.

The respondent in the matter before us applied for the alienation of State land to him but was kept waiting on the side-lines for some 8 years with no response whatsoever to date but during this period land in the same area had been parcelled out to others including the appellant who was the Menteri Besar of the State and some members of the State Executive Council which constituted in effect the approving authority for the alienation of State land. Bluntly put, the respondent is alleging an abuse of power and he seeks to impugn the validity of the alienation of the land in question to the appellant. This is as clear a case as one can point to of a person who comes within the ambit of the second limb in the *Boyce*[8] formula we have referred to as having a special or substantial interest in the subject-matter of the proceedings he has instituted and whose legal interests are peculiarly affected. This clearly gives him capacity to sue and there can be no justification in debarring him from doing so *in limine*. We would however make it clear that the merits of the substantive proceedings are matters for argument and determination at the trial at which other considerations such as the exercise of the discretion of the court in granting declaratory orders will have to be taken into account in the circumstances of the case.

It might not perhaps be inappropriate to make some observations on the *locus standi* rule in relation to injunctions and declarations. We refer to *Lim Cho Hock* v. *Government of the State of Perak & 2 ors.*[17] and accept and approve the discussion in the judgment in that case (at pages 149-151) on the question of *locus standi* and endorse the concept of liberalizing the scope of individual standing. Even if the law's pace may be slower than society's march, what with increased and increasing civic-consciousness and appreciation of rights and fundamental values in the citizenry, it must nonetheless strive to be relevant if it is to perform its function of peaceful ordering of the relations between and among persons in society, and between and among persons and government at various levels. It would not perhaps be inapt to aphorize that the idle and whimsical plaintiff, a *dilettante* who litigates for a lark, is a spectre which haunts the legal literature, not the courtroom. In the United States of America, where standing rules are relatively lax, it has been found that although the gates have been open there has been no flood.

Hutley, J.A., observed in *Johnco Nominees Proprietary Ltd.* v. *Albury-Wodonga (N.S.W.) Corporation*[18]:

"The reality of the situation is that so far from a legal right having to precede a declaration, the declaratory procedure can actually generate rights".

There are also some recent cases in which the plaintiff was allowed to sue, even though he had no real grievance or injury at all, as they involved matters of particular public concern [*Blackburn* v. *Attorney-General*[19]; *Regina* v. *Greater London Council, Ex parte Blackburn*[20]; *Regina* v. *Metropolitan Police Commissioner, Ex parte Blackburn*[21]], and the reasoning seems to have been that unless the court in its discretion gave the plaintiff a hearing, then no one would bring the matter to court.

We would also refer to the very recent decision of the English Court of Appeal in *Regina* v. *Horsham Justices, Ex parte Farquharson and Anor.*[22] where Lord Denning, M.R., refers (at page 446) to the principle he had endeavoured to state in earlier cases which was endorsed by Lord Diplock in the House of Lords in *Inland Revenue Commissioners* v. *National Federation of Self-Employed and Small Businesses Ltd.*[23] (at page 737) and again when he said (at page 740):

"it would, in my view, be a grave *lacuna* in our system of public law if a pressure group, like the federation, or even a single public-spirited taxpayer, were prevented by outdated technical rules of *locus standi* from bringing the matter to the attention of the court to vindicate the rule of law and get the unlawful conduct stopped".

The sensible approach in the matter of *locus standi* in injunctions and declarations would be that as a matter of jurisdiction, an assertion of an infringement of a contractual or a proprietary right, the commission of a tort, a statutory right or the breach of a statute which affects the plaintiff's interests substantially or where the plaintiff has some genuine interest in having his legal position declared, even though he could get no other relief, should suffice. When it comes however to the question of discretion on a consideration of the substantive application, it may well be proper in particular cases to refuse a remedy to persons who, though they may have standing as a matter of jurisdiction on the lines we have indicated, do not merit it, perhaps because, *inter alia*, others are more directly affected, or the plaintiff himself is fundamentally not.

The Upshot

For the reasons stated in the light of our discussion of the authorities and on the facts and circumstances in casu we find that the respondent had *locus standi* to institute and maintain these proceedings and we accordingly dismissed this appeal with costs at the conclusion of argument and ordered the deposit lodged in court by way of security to be paid out to the respondent to account of his taxed costs.

Appeal dismissed

Solicitors: *Hassan Yunos & Co.; Abdul Razak Ahmad.*